



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0260]

RIN 1625-AA00

Safety Zone; United States and Canadian Military Exercise Jump Training, Lake Erie, Hamburg, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Erie, Hamburg, NY. This rule is necessary to protect the United States military and Canadian military participants as well as mariners and vessels from the navigational and safety hazards associated with the airborne deployment of U.S. and Canadian military personnel and their associated equipment. This rule is intended to restrict vessels from a portion of Lake Erie from the shoreline of Woodlawn Beach out approximately one mile into Lake Erie during the airborne deployment exercise.

DATES: This temporary final rule is effective from 7:30 a.m. July 9, 2014, until 6:30 p.m. July 11, 2014. It will be enforced from 7:30 a.m. until 6:30 p.m. daily from July 9, 2014 through July 11, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2014-0260]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LT Christopher Mercurio, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716-843-9573, e-mail SectorBuffaloMarineSafety@uscg.mil. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826 or 1-800-647-5527.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
TFR	Temporary Final Rule
§	Section

A. Regulatory History and Information

The Coast Guard is issuing this TFR without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display, which are discussed further below.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this TFR effective less than 30 days after publication in the Federal Register. For the same reasons discussed in the preceding paragraph, waiting for a 30-day notice period to run would be impracticable and contrary to the public interest.

B. Basis and Purpose

Between 7:30 a.m. to 6:30 p.m. each day on July 9-11, 2014 a training operation will be taking place on Lake Erie Hamburg, NY. The Captain of the Port Buffalo has determined that airborne deployment of military personnel may pose a significant risk to public safety and property. Such hazards include parachutes and rigging equipment for the parachuting military personnel floating on the water as well as the potential for collisions between vessels and descending parachuting military personnel.

C. Discussion of the Final Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of U.S. and Canadian military personnel, transient watercraft and potential spectator vessels during this exercise. This zone will be effective and enforced between 7:30 a.m. to 6:30 p.m. daily from July 9, 2014, through July 11, 2014. Radio broadcasts will be made prior to all jump evolutions. This safety zone will encompass all waters of Lake Erie, Hamburg, NY off of Woodlawn beach within a zone described by the following position: beginning at 42°45'50.82"N, 078°53'23.46"W, the point of origin, in a straight line north to 42°46'50.82"N, 078°53'23.46"W then in a straight line east to 42°46'50.82"N, 078°52'01.68"W then in a straight line to south to the shoreline position 42°46'17.84"N, 078°52'01.68"W and

continuing along the shoreline south to 42°45'50.82"N ,
078°52'48.18"W and returning in a straight line west to the point
of origin (NAD 83).

Entry into, transiting, or anchoring within the safety zone
is prohibited unless authorized by the Captain of the Port
Buffalo or his designated on-scene representative. The Captain
of the Port or his designated on-scene representative may be
contacted via VHF Channel 16.

D. Regulatory Analyses

We developed this rule after considering numerous statutes
and executive orders related to rulemaking. Below we summarize
our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under
section 3(f) of Executive Order 12866, Regulatory Planning and
Review, as supplemented by Executive Order 13563, Improving
Regulation and Regulatory Review, and does not require an
assessment of potential costs and benefits under section 6(a)(3)
of Executive Order 12866 or under section 1 of Executive Order
13563. The Office of Management and Budget has not reviewed it
under those Orders.

We conclude that this rule is not a significant regulatory
action because we anticipate that it will have minimal impact on
the economy, will not interfere with other agencies, will not

adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. § 601-612), we have considered the impact of this rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Lake Erie between 8:00 a.m. to 6:00 p.m. daily starting on July 9-11, 2014.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following

reasons: this safety zone would be activated, and thus subject to enforcement, for only 10 hours each day. The majority of the training exercises will be conducted during the regular business week during normal daylight business hours reducing the likelihood of affecting transient recreational vessels. Traffic may be allowed to pass around the zone with the permission of the Captain of the Port before and after the completion of each evolution. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or

options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. §§ 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §§ 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34) (g), of the Commandant Instruction because it involves the establishment of a safety zone.

A preliminary environmental analysis checklist and a preliminary Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306,

3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0260 to read as follows:

§ 165.T09-0260 Safety Zone; US/CA Special Forces Jump Training, Lake Erie, Hamburg, NY.

(a) Location. This safety zone will encompass all waters of Lake Erie, Hamburg, NY off of Woodlawn beach within a zone described by the following positions: beginning at 42°45'50.82"N, 078°53'23.46"W, the point of origin, in a straight line north to 42°46'50.82"N, 078°53'23.46"W then in a straight line east to 42°46'50.82"N, 078°52'01.68"W then in a straight line to south to the shoreline position 42°46'17.84"N, 078°52'01.68"W and continuing along the shoreline south to 42°45'50.82"N , 078°52'48.18"W and returning in a straight line west to the point of origin (NAD 83).

(b) Enforcement period. This section will be enforced between 7:30 a.m. to 6:30 p.m. daily starting on July 9, 2014, through July 11, 2014.

(c) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within the safety zone described in paragraph (a) of this § 165.T09-0260 is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

(d) Exemption. Public vessels, as defined in paragraph (c) of this section, are exempt from the requirements in this section.

(e) Waiver. For any vessel, the Captain of the Port Buffalo or his designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of public or environmental safety.

(f) Notification. The Captain of the Port Buffalo will notify the public that the safety zones in this section is or will be enforced by all appropriate means to the affected segments of the public including publication in the FEDERAL REGISTER as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone is cancelled.

Dated: June 12, 2014.

B. W. ROCHE,
Captain, U. S. Coast Guard,
Captain of the Port Buffalo.

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Date: 06/26/2014]